NOTES

RECENT SUPREME COURT LIMITATIONS ON FEDERAL JURISDICTION

A HARMONIOUS working relationship between federal and state courts is basic to the effective functioning of our dual system of government.[1] Originally Congress conferred jurisdiction upon the lower federal courts primarily over controversies between citizens of different states[2] and later over litigation involving a substantial federal question.[3] A strong movement to restrict the authority of federal courts over problems essentially of state concern, stemming originally from a fear of judicial interference with programs of social reform,[4] moved Congress to withdraw federal jurisdiction to enjoin proceedings in state courts,[5]

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1. The literature is legion. See Brown, *The Jurisdiction of the Federal Courts Based on Diversity of Citizenship* (1920) 78 U. OF PA. L. REV. v79; Clark, *Diversity of Citizenship Jurisdiction of Federal Courts* (1933) 19 A. B. A. J. 499; Frankfurter, *A Note on Diversity Jurisdiction—In Reply to Professor Yntema* (1931) 79 U. OF PA. L. REV. 1097; Frankfurter, *Distribution of Judicial Power between United States and State Courts* (1928) 13 CORN. L. Q. 499; Friendly, *The Historic Basis of Diversity Jurisdiction* (1928) 41 HARV. L. REV. 483; Newlin, *Proposed Limitations Upon Our Federal Courts* (1929) 15 A. B. A. J. 401; Pogue, *State Determination of State Law and the Judicial Code* (1928) 41 HARV. L. REV. 623; Warren, *Federal and State Court Interference* (1930) 43 HARV. L. REV. 345; Yntema, *The Jurisdiction of the Federal Courts in Controversies Between Citizens of Different States* (1933) 19 A. B. A. J. 71, 149, 265; Yntema and Jaffin, *Preliminary Analysis of Concurrent Jurisdiction* (1931) 79 U. OF PA. L. REV. 869; Comment (1932) 31 MICH. L. REV. 59.

2. 1 STAT. 73 (1789).

3. 18 STAT. 470, 28 U. S. C. § 41 (1940).

4. Clark, *supra* note 1; Frankfurter, *Distribution of Judicial Power between United States and State Courts* (1928) 13 CORN. L. Q. 499; *A Note on Diversity Jurisdiction—In Reply to Professor Yntema* (1931) 79 U. OF PA. L. REV. 1097; Comment (1932) 31 MICH. L. REV. 59.

5. 1 STAT. 334 (1861), 28 U. S. C. § 379 (1940). This Act was not well received by the Federal Bench. After having been ignored for a long time, it was riddled with judicial exceptions. See Warren, *Federal and State Court Interference* (1930) 43 HARV. L. REV. 345, 348. Thus it seemed well settled that it would not be applied where an injunction was used to redner effective prior federal jurisdiction [French v. Hay, 22 Wall. 250 (U. S. 1874); Rickey Land & Cattle Co. v. Miller & Lux, 218 U. S. 258 (1910)]; where a case had been properly removed to a federal court [Dietsch v. Huidelkoper, 103 U. S. 494 (1880)]; or to prevent the enforcement of a judgment fraudulently obtained in a state court [Marshall v. Holmes, 141 U. S. 589 (1891)].

More recently, however, the Supreme Court, by elaborating the principle that courts of equity do not restrain criminal prosecutions, has reversed the trend towards limiting the statute. It has failed to overrule the previous judicial exceptions expressly, preferring to base its decisions on want of equity. Thus in Douglas v. City of Jeannette, 319 U. S. 157

orders by state utility commissions,[6] collection of state taxes,[7] and certain labor activities.[8] Despite repeated and persistent Congressional refusals to limit federal judicial power further,[9] the Supreme Court has developed certain additional limitations to the legislative grant. In these cases, however, reversing the assumption of jurisdiction over controversies, in spite of the fact that the statutory jurisdictional requirements had been met, the Court has failed to evolve a consistent policy, and, in consequence, a litigant often may not know whether he can institute proceedings in a federal court.

In certain of the cases where the Supreme Court limited the jurisdiction of the federal courts, it has ordered the inferior tribunals to relinquish jurisdiction to expert state administrative agencies established especially to handle the type of problem involved in the litigation. Though implicit in some early cases,[10] this policy was crystallized in *Pennsylvania v. Williams*.[11] After a receiver had been appointed by a federal district court to liquidate a building and loan association, the state attorney general petitioned the court for a discharge of the receivership, claiming an exclusive right to administer the debtor's assets had been vested in the State Secretary of Banking under a local statute. In reversing the district court's decision denying the petition, the Supreme Court declared that, although the court had jurisdiction, it should have exercised its equitable

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(1943), a city ordinance made distribution of pamphlets without a taxed license punishable by fine or imprisonment. Plaintiff Jehovah's Witnesses invoking federal jurisdiction on the ground that such an ordinance violated the Fourteenth Amendment sought an injunction to restrain their prosecution. The Supreme Court, which had previously held the ordinance unconstitutional, decided, nevertheless, that an injunction should not be granted since there was no threat of "irreparable injury." Yet only a determined conceptual reading of the term "irreparable injury" would exclude the threat of criminal prosecution from that category. See Borchard, *Challenging "Penal" Statutes by Declaratory Action* (1943) 52 YALE L. J. 445, 461. See also Comment (1936) 46 YALE L. J. 255. It would seem that the rationale of the *Douglas* and similar cases was based on a new policy concept demanding punctilious regard for independent state right, and that the ordinary requisites for an injunction were redefined in terms of that policy. While the wisdom of these decisions has been doubted, they have laid down a clear doctrine easily applicable to new cases.

The only judicial exception to the Act of 1793 which has been approved recently by the reconstituted Supreme Court is the one where a federal court takes custody of a *res* before a state court. A federal injunction of the state court is allowed to prevent an unseemly struggle between the two courts over the property. Toucey v. New York Life Insurance Co., 314 U. S. 118 (1941). See Note (1942) 52 YALE L. J. 150.

6. 48 STAT. 775 (1934), 28 U. S. C. § 41 (I) (1940).

7. 50 STAT. 738 (1937), 28 U. S. C. § 41 (I) (1940).

8. 47 STAT. 70 (1932), 29 U. S. C. §§ 101-115 (1940).

9. For recent instances see SEN. REP. No. 626, 70th Cong., 1st Sess. (1928); SEN. REP. No. 691, 71st Cong., 2d Sess. (1930); SEN. REP. No. 530, 72d Cong., 1st Sess. (1932); SEN. REP. No. 701, 72d Cong., 1st Sess. (1932).

10. Compare Gilchrist v. Interborough Rapid Transit Co., 279 U. S. 159 (1929); Rogers v. Guaranty Trust Co., 288 U. S. 123 (1933).

11. 294 U. S. 176 (1935). The case was correctly followed in Gordon v. Ominsky, 294 U. S. 186 (1935); Gordon v. Washington, 298 U. S. 30 (1935).

discretion to relinquish it in order to show "a proper regard for the rightful independence of state government." [12] A later case indicated that this decision was based on realistic recognition that it is wasteful to liquidate a debtor in an inexpert court when there is available expert administrative machinery. In the *Bradford* case,[13] the Supreme Court held that a receiver of a national bank was privileged to have his status as *cestui,* in a trust originally administered by the bank, determined by the federal district court, even though control of the trust had previously been passed to a new receiver appointed by a state court. The Court distinguished the *Williams* case, pointing out that the mere concurrent jurisdiction of state and federal courts did not create the same type of conflict as arose when a federal court interfered with a state administrative agency.

In other situations the Supreme Court has ordered relinquishment of jurisdiction to state courts ostensibly because of reluctance to decide a case on constitutional grounds or to adjudicate unsettled questions of local law. Thus in an early case,[14] a state administrative order was challenged in a federal district court as violative of the Federal Constitution, but the outcome of the constitutional problem depended on a prior determination of an unsettled question of construction of a state statute. The Court held that the district court should have refused to exercise jurisdiction, declaring that construction of state statutes should be left to local courts. Similarly, where jurisdiction was also invoked by reason of a federal constitutional question but the controversy could have been decided either on the constitutional ground or on an alternative independent ground of state law, the Court, reluctant to decide the constitutional issue, ruled that jurisdiction should have been relinquished.[15] It had long been settled that once a court obtained jurisdiction because of the existence of a federal question it could retain it whether or not adjudication of the federal question ultimately became necessary.[16] However, the Court's reluctance to have such

12. 294 U. S. 176, 185 (1934).

13. Commonwealth v. Bradford, 297 U. S. 613 (1936). Compare Railroad Commissioner of Texas v. Rowan & Nichols Oil Co., 310 U. S. 573 (1940), Note (1942) 51 YALE L. J. 680. In that case, the Court held that when a federal court is asked to enjoin an order of a state administrative agency, challenged as violative of the Fourteenth Amendment, it should resolve all doubts concerning the order's constitutionality in favor of administrative agency whose expertness it should trust. The opinion, however, was not based on jurisdictional grounds.

14. Gilchrist v. Interborough Rapid Transit Co., 279 U. S. 159 (1929).

15. Railroad Commission of Texas v. Pullman Co., 312 U. S. 496 (1941). Comment (1941) 54 HARV. L. REV. 1379, Note (1941) 50 YALE L. J. 1272. But compare Lane v. Wilson, 307 U. S. 268 (1939), involving racial discrimination, which may indicate a different treatment of civil liberty cases, although it is distinguished in the *Pullman* case on other grounds. This policy has been followed even though jurisdiction rested on diversity of citizenship. Chicago v. Fieldcrest Dairies, Inc., 316 U. S. 168 (1942). The constitutional issue was considered not "substantial" by the Court. *Id.* at 173.

16. Tennessee v. Davis, 100 U. S. 257, 264 (1879); Southern Pac. R. R. v. California, 118 U. S. 109 (1886); Fallbrook Irrigation District v. Bradley, 164 U. S. 112 (1896); Siler v. Nashville R. R., 213 U. S. 175 (1909).

cases decided in the national courts was a plausible, if not logically necessary, consequence of the circumstance that it sought to avoid a decision on the federal constitutional issue,[17] while, at the same time, the existence of that issue was the only basis for federal jurisdiction.

More recently the Supreme Court has extended its policy of staying the federal courts' jurisdiction, when applicable state law was doubtful, to situations where jurisdiction rested on diversity of citizenship, and a federal question not a constitutional problem was involved. Thus in *Thompson v. Magnolia Petroleum Co.*[18] an unsettled question of state property law, involved in the disposal of a railroad reorganization pending in a bankruptcy court, was remanded to the state court for decision. Since decision of the question by the federal court would not have hampered the work of an administrative agency, the only adverse consequence would have been the possibility of a different holding by the Illinois Supreme Court in a later case between different litigants. While this decision stated another judicial limitation of federal jurisdiction, it was, nevertheless, not inconsistent with prior limitations.

Considerable uncertainty and confusion has been introduced, however, by two decisions rendered by the Supreme Court in the last two terms. Not only are these two cases in conflict with each other, but they would seem to disregard prior limitations on federal jurisdiction enunciated by the Court. In one, *Burford v. Sun Oil Co.*,[19] the plaintiff corporation challenged an oil proration order of the Texas Railroad Commission on the ground that it was issued in violation of Texas law and the Fourteenth Amendment to the Federal Constitution. Pursuant to a Texas statute permitting any "interested person affected" by "any order" of the Commission to contest its validity in a court of competent jurisdiction,[20] the Sun Oil Co. petitioned the federal district court to enjoin the Commission's order, alleging diversity of citizenship and the existence of a federal question as the bases for jurisdiction. The Supreme Court, in upholding the decision of the district court dismissing the case, declared that as a matter of sound equitable discretion, the court should not have assumed jurisdiction because "delay, misunderstanding of local law, and needless federal conflict with the state policy are the inevitable product of this double system of review." The Supreme Court also found federal jurisdiction inappropriate because "the judicial review of the Commission's decisions in the state courts is expeditious, and adequate." [21]

17. Light v. United States, 220 U. S. 523 (1911); Siler v. Louisville & N. R. R., 213 U. S. 175 (1909); see Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 347 (1936) (concurring opinion).

18. 309 U. S. 478 (1940).

19. 319 U. S. 315 (1943).

20. TEX. REV. CIVIL STAT. ANN. (Vernon, 1925) Art. 6049c. The question of statutory interpretation is ably discussed in Mr. Justice Frankfurter's dissent in Burford v. Sun Oil Co., 319 U. S. 315, 342-44 (1943).

21. Burford v. Sun Oil Co., 319 U. S. 315, 327 (1943).

In the other recent case—*Meredith v. City of Winter Haven* [22]—holders of the municipality's bonds sued the city in the federal district court, resting jurisdiction on diversity, and alleging that the city was about to call and retire the bonds without providing for payment of certain deferred interest coupons. Admittedly, the legality of the city's proposed action depended upon the interpretation of doubtful questions of Florida law. The district court, resolving these doubts in the city's favor, dismissed the action on the merits. On appeal, the circuit court of appeals held that the district court should have refused to take jurisdiction, because "it has been the rule of federal courts where questions of state law involving provisions of statutes or constitutions, especially with matters of general public concern in a particular state, to decline to determine the state law and to remit the litigant to the state court." [23] On certiorari, the Supreme Court reversed, holding that "the difficulties of ascertaining what the state courts may hereafter determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case which is properly brought to it for decision." [24] The opinion stressed "the duty of the federal courts . . . to decide questions of state law," explaining that only in "exceptional cases" "some recognized public policy" may warrant the non-exercise of a jurisdiction conferred by statute.[25] The majority opinion went on to lay down eight categories [26] of such exceptional cases. One of these categories comprises controversies in which a federal court would be called upon to "appraise or shape domestic policy of the state governing its administrative agencies," [27] for which the Court cited the *Burford* case.

While the opinion of the Court in the *Burford* case is ostensibly premised on the discretionary character of equity jurisdiction, the decision amounts to a judicial limitation of federal jurisdiction. It is true that the "public interest" is one of the factors which courts of equity have historically considered in deciding whether to grant or deny an injunction, but this "public interest" was relevant in the consideration of the merits of complainant's case, and not in the determination of his right to be heard. Moreover, it is doubtful whether the Supreme Court intended to limit the self-restraining policy enunciated to injunction proceedings against state administrative agencies, while allowing district courts

22. 320 U. S. 228 (1943).

23. Meredith v. City of Winter Haven, 134 F. (2d) 202, 207 (C. C. A. 5th, 1943).

24. Meredith v. City of Winter Haven, 320 U. S. 228, 234 (C. C. A. 5th, 1943).

25. *Id.* at 234.

26. The categories are (1) non-interference with a recognized, defined public policy, (2) non-interference with state criminal prosecutions, (3) non-interference with fiscal affairs of the state, (4) non-interference with the state function of prescribing utility rates, (5) non-interference with state liquidation of a bank, (6) refusal to appraise or shape domestic policy of the state governing its administrative agencies, (7) failure of an equitable cause of action, and (8) refraining from unnecessary decisions of constitutional questions. *Id.* at 235-36.

27. *Id.* at 235.

still to entertain suits under diversity jurisdiction for declaratory judgments or for damages in tort. For, palpably, the whole purpose of the case would be frustrated if federal courts were still left free to issue declaratory judgments, which would render the conflict between the individual producers of oil and the state regulatory agency *res judicata* and which could be enforced by appropriate process in the state courts. Similarly, in any action to recover damages for the allegedly illegal and tortious acts of a state official seeking to enforce an oil proration order, the federal court would necessarily have to pass on the legality of the particular order, which is the very question the Supreme Court desires to leave for the state tribunals. Hence, the implication of the *Burford* opinion is that federal district courts will no longer enforce rights arising under Texas' oil proration statutes. The fact that the injunction is the device almost invariably used to enforce such rights permitted the Supreme Court to talk in terms of "equity jurisdiction," although the net result is a limitation on the Congressionally conferred jurisdiction of federal district courts.

Moreover, the *Burford* limitation does not seem to fall within any of the previously enunciated judicial exceptions to federal jurisdiction. Unlike the *Williams* case,[28] jurisdiction in the *Burford* case was not relinquished to an expert administrative agency which could handle the problem more efficiently and expeditiously but to another court of general jurisdiction.[29] Nor could relinquishment have been induced because jurisdiction rested on the presence of a constitutional question which could be avoided by deciding the case on an alternative ground of state law,[30] since jurisdiction also rested on diversity of citizenship. Finally, refusal to decide the case in the federal forum could not have been based, as in the *Magnolia* case,[31] on the necessity of resolving an unsettled problem of state law, since the applicable statute had recently been interpreted by the Texas courts.[32] In consequence, the *Burford* case seems to state another judicial restriction upon the exercise of federal jurisdiction—one based on an uncertain policy favoring enforcement of important state policies, as embodied in legislation, in state courts. While the specific issue before the Court involved an oil proration program, the principle enunciated would seem to cover all state regulatory legislation.

In the *Meredith* case, however, the policy of non-interference with a state policy pronounced in the *Burford* case was apparently disregarded. For it would seem difficult to distinguish in principle between the state policy expressed in the bond-issuing function of a municipality and the function of administrative agencies enforcing oil proration programs. A realistic differentiation may be

28. 294 U. S. 176 (1935).

29. Compare Commonwealth v. Bradford, 297 U. S. 613 (1936).

30. See *supra* note 15.

31. 309 U. S. 478 (1940).

32. Railroad Commission v. Shell Oil Co., 139 Tex. 66, 80, 161 S. W. (2d) 1022 (1942); Cook Drilling Co. v. Gulf Oil Corp., 139 Tex. 80, 161 S. W. (2d) 1035 (1942); Gulf Land Co. v. Atlantic Refining Co., 143 Tex. 59, 70-71, 131 S. W. (2d) 73 (1939).

forced to predicate itself upon comparison of the newness of most administrative agencies with the time honored bond-issuing activity of state and municipal governments. Awareness of that difference may have been a strong factor in the Court's decision. Historically, perhaps the most important reason for the establishment of diversity jurisdiction seems to have been a desire to safeguard interstate commerce by assuring access to strong creditors' courts [33]—a factor which was firmly entrenched as a judicial principle in *Gelpcke v. Dubuque* [34] and the series of cases following.[35] Yet the Court did not find it necessary to make explicit any such distinguishing considerations.

More puzzling than the Court's tenuous distinction of the *Burford* case in the *Meredith* case was perhaps its failure to apply the policy declared in the *Magnolia* case.[36] Since admittedly the legality of the city's action in the *Meredith* case depended on the interpretation of a doubtful question of state law, the federal court, under the *Magnolia* doctrine, should have remanded the unsettled state question for decision in the state courts. But perhaps the decision in the *Meredith* case also denotes a return to an exclusive reliance on statutory language restricting the exercise of federal jurisdiction, which would limit the holdings of cases stating greater restraints to their particular facts. On the other hand, the *Meredith* decision may in turn also be restricted to its facts, leaving the seemingly conflicting doctrines of earlier cases intact, and available for application to new factual situations.

It is difficult to find any logically consistent reconciliation of the results in the *Burford, Magnolia,* and *Meredith* cases. Moreover, in soliciting approval of these conflicting decisions by its *dicta,* the Court has failed to articulate a systematic policy, talking instead in terms of high level abstractions— such as the need to avoid "delay, misunderstanding of local law and needless federal conflict with state policy" [37] and the "rightful independence of state governments." [38] There has been no attempt to relate these abstractions to operational principles in specific factual situations. In consequence, the Court,

33. "There was a vague feeling that the new [federal] courts would be strong courts, creditors' courts, business men's courts." Friendly, *The Historic Basis of Diversity Jurisdiction* (1928) 41 HARV. L. REV. 483, 498.

34. 1 Wall. 175 (U. S. 1863). See Thayer, *The Case of Gelpcke v. Dubuque* (1891) 4 HARV. L. REV. 311.

35. See, *e.g.,* Meyer v. Muscatine, 1 Wall. 384 (U. S. 1863); Riggs v. Johnson County, 6 Wall. 166 (U. S. 1867); Butz v. City of Muscatine, 8 Wall. 575 (U. S. 1869); Olcott v. The Supervisors, 16 Wall. 678 (U. S. 1872); Township of Pine Grove v. Talcott, 19 Wall. 666 (U. S. 1873); Taylor v. Ypsilanti, 105 U. S. 60 (1881); Thompson v. Perrine, 106 U. S. 589 (1882).

36. The absence of an explanation is particularly puzzling in view of the fact that the *Magnolia* case is cited in the Court's opinion for a comparison with cases involving a constitutional question—a category in which this case could scarcely fall. See Meredith v. City of Winter Haven, 320 U. S. 228, 246 (1943).

37. See Burford v. Sun Oil Co., 319 U. S. 315, 327 (1943).

38. See DiGiovanni v. Camden Ins. Ass'n, 296 U. S. 64, 73 (1935).

while repeating its emotionally appealing maxims,[39] has created the very real problem that a litigant in many instances can not tell whether a case begun in a federal court, in reliance on statutory jurisdiction, will be remanded to a state court, after having been tried on the merits and appealed to the Supreme Court. It would seem more conducive to a speedy and predictable administration of justice if the Supreme Court left formulation of the principles concerning distribution of judicial business between state and federal courts to Congress,[40] and limited itself to enforcement of the hitherto clear legislative mandate.[41]

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39. Compare Mr. Justice Holmes' discussion of "unreal explanations," "unreal formulas," and "inadequate generalizations." HOLMES, *Law in Science and Science in Law* in COLLECTED LEGAL PAPERS (1920) 210, 229-30. Compare also OGDEN and RICHARDS, THE MEANING OF MEANING (1927) c. 2.

40. Apart from the propriety of judicial legislation, the Supreme Court's notion that "delay, misunderstanding of local law, and needless federal conflict with State policy, are the inevitable product of this double system of review" may be challenged in the light of current conditions. Since the federal courts are by and large nearly current in their dockets, delay occurs only when a case begun in the federal courts is held in abeyance pending a decision in the state courts on the local law involved. As for misunderstanding local law, it is difficult to perceive how this can be a source of conflict when the federal courts are bound to follow the appropriate state law and to remand to the state courts when the controlling state law is not clear. It would seem, therefore, that the charge that heedless federal conflict is the inevitable product of this double system of review can only mean that in the assessment of evidence and other elements which enter into a judicial judgment, a federal judge may make judgments different from those which a state judge may make. The fact that they are different does not mean, however, that the decisions of a federal judge are always adverse to the state and those of a state judge always favorable to the state, or that federal judges are necessarily less honest, competent, or learned than state judges.

There is no question but that there has been "needless federal conflict" in the past, but it is significant that the greatest conflict occurred in the early years of the depression. It is possible that the antipathy toward state regulation which was expressed through the medium of diversity jurisdiction did not reflect a prejudice against states *per se*, but an intense dislike of government regulation in general, and that *Erie Railroad v. Tompkins* and changed judicial predilections have removed this, the real source of the conflict.

41. To do so, the Court might have to repudiate the doctrines of the *Magnolia* and *Burford* cases and to limit the cases involving a constitutional question explicitly to their facts. The principle of equitable discretion could remain a useful technique for declining jurisdiction in situations where, as in the *Williams* case, its exercise would be patently wasteful, idle, or frivolous.